



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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REGION III

DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

September 20, 2024

Dr. Kevin J. O'Donnell, Jr.
Superintendent
South Middleton School District
Via Email Only: kodonnell@smsd.us

Re: OCR Docket Number 03-22-1186

Dear Dr. O'Donnell:

This is to advise you that the U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against South Middleton School District (the District). The Complainant filed this complaint on behalf of two students in the District whom we will refer to as Student 1 and Student 2. The Complainant alleges that the District discriminated against Student 1 and Student 2 on the basis of race by failing to appropriately redress incidents of racial harassment of which it had notice at the [redacted content] School (the School).

OCR enforces:

- Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance from the Department.
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department.
- Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department.
- Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction pursuant to Title VI, Section 504, Title II and Title IX.

In reaching a determination, OCR reviewed documentation provided by the Complainant and the District and OCR interviewed the parents of Students 1 and 2, and District staff, including the current Title IX Coordinator and [redacted content] School counselor. OCR also interviewed the former [redacted content] School Principal and former [redacted content] School Assistant Principal, but neither were able to recall any details regarding any of the incidents discussed below.

With regard to Student 1, the only incident raised by the Complainant occurred in [redacted content], which is untimely. Student 1's parents acknowledged that no further incidents occurred thereafter involving Student 1. As such, this letter will only detail the incidents involving Student 2 and other District students during the [redacted content] school year and the District's response to those incidents.

After carefully considering all of the information obtained during the investigation, OCR concludes that the District violated Title VI by not taking sufficient steps reasonably designed to prevent racial harassment from recurring at the School and not taking sufficient steps to remedy the effects of the harassment on Student 2 and other students. In addition, OCR identified compliance concerns regarding the District's fulfillment of its recordkeeping obligations under Title VI, Section 504, and Title IX, as well as the District's fulfillment of its Title IX obligations to address sexual harassment and its Section 504 obligations to ensure a free appropriate public education (FAPE) for students with disabilities. To address the violations and compliance concerns identified by OCR, the District signed the enclosed Resolution Agreement. OCR's findings and conclusions are discussed below.

FACTUAL SUMMARY

Background

The South [redacted content] School District is located in Boiling Springs, PA, just outside of Harrisburg, PA. According to the [2020-2021 Civil Rights Data Collection](#) (CRDC), total enrollment at the [redacted content] School was [redacted content].

During the [redacted content] school year, Student 2 attended [redacted content] grade at the School. She is a student with a disability and at all times relevant was receiving special education services pursuant to an Individualized Education Plan (IEP). The Complainant alleged that Student 2 was subjected to racial harassment by classmates and the District failed to adequately investigate the incidents and take appropriate action to end the harassment and prevent its recurrence. The District acknowledged to OCR that Student 2 experienced racial harassment, but it denied that it failed to adequately investigate the incidents or take appropriate action to end the harassment and prevent its recurrence.

Board Policy 103

Board Policy 103 (Policy 103) was in effect at all relevant times. Policy 103 prohibits discrimination on the basis of race, color, and national origin, among other bases. In addition,

Policy 103 directs students and parents to file complaints with the building principal, who in turn will promptly notify the Title IX Coordinator of all reports of discrimination. If the Title IX Coordinator determines that the report should be addressed through the Policy 103's discrimination complaint procedures (the Complaint Procedures), the Compliance Officer will be notified. When any party is an identified student with a disability, or thought to be a student with a disability, the Title IX Coordinator shall notify the Director of Special Education and coordinate to determine whether additional steps must be taken.

The Complaint Procedures state that the Compliance Officer may offer the parties informal remedies to address the reported conduct, if appropriate. Otherwise, the building principal or other designee will conduct an investigation. The investigator shall prepare and submit a written report to the Compliance Officer within twenty (20) school days, that includes a summary of the investigation, a determination of whether the complaint has been substantiated, the information and evaluation that formed the basis for the determination, whether the conduct violated Policy 103, and a recommended disposition. Both parties shall be informed of the outcome of the investigation. The Complaint Procedures also provide that if an investigation results in a finding that Policy 103 was violated, the District shall take steps to prevent the recurrence and to address its discriminatory effects on the complainant and that staff shall document the corrective action taken and inform the complainant.

Harassment Incidents

[redacted content]

According to the Complainant, on [redacted content], Student 2 was walking in the hallway talking to a friend when a male student (Student 3) turned around and said, "Can you turn around and shut the fuck up, n****r?" The Complainant provided OCR with an image of an email that Student 2's father sent to the former Principal the next morning stating that a male student used the N-word in the hallway near the cafeteria the day before and asking that someone investigate. The Complainant told OCR that the former Principal did not respond; instead, the School Counselor responded by email stating that the former Principal had spoken to Student 2, Student 3, and other witnesses, and that the former Principal intended to call other student witnesses the next day to learn more about what happened. According to the Complainant, the former Assistant Principal then called Student 2's father, and informed him that Student 3 received a [redacted content]. The Complainant also told OCR that Student 3 again called Student 2 the N-word while on the school bus home, saying to Student 2, "that's why you Black people are n****rs." However, the Complainant acknowledged that neither Student 2 nor her parents reported this subsequent incident on the school bus to the District.

Although OCR asked the District for all reports of racial harassment during the [redacted content] school year, the District did not provide OCR with a copy of the [redacted content] email from Student 2's father. Further, while the District told OCR that it investigated and resolved the [redacted content] incident by disciplining Student 3, the District did not provide OCR with any documentation of its investigation of this incident or discipline imposed on Student 3 for the incident.

September 30, 2021

The District provided OCR with a disciplinary report for Student 3 that details the District's investigation of an incident that took place on [redacted content], involving Student 2. According to the discipline report, Student 2's father sent an email to District administrators reporting that Student 3 called Student 2 the N-word twice in the hallway. The discipline report shows that the District did not conduct an investigation of the [redacted content] incident until [redacted content], following another complaint from Student 2's father on [redacted content], about another incident, which is explained in more detail below.

According to the former Assistant Principal's notes in the disciplinary report, he interviewed Student 2 on [redacted content], and he pulled relevant video footage for the September and December incidents to identify student witnesses to interview. The notes also state that the former Assistant Principal interviewed Student 3, who denied calling Student 2 the N-word. The former Assistant Principal wrote that he interviewed seven other students who were in the hallway, and one student confirmed that Student 3 used a racial epithet. As such, the former Assistant Principal concluded in the disciplinary report that Student 3 was "found to have discriminated against Student 2." The disciplinary report shows that Student 3 was assigned a [redacted content] for "Disrespectful Behavior" and "Racial/Ethnic Intimidation" in [redacted content]. It is unclear from the disciplinary report, however, whether the former Assistant Principal's investigative inquiry was related to the [redacted content] or the [redacted content] incident. Further, the disciplinary report does not clarify whether the suspension was for the [redacted content] incident, the [redacted content] incident, or for both. The School Counselor told OCR that she started regularly checking on Student 2 after the [redacted content] incident occurred. As the former Principal and former Assistant Principal could not recall any of the alleged incidents, OCR could not determine why the investigation of the [redacted content] incident did not occur until [redacted content].

[redacted content]

During OCR's investigation, the Complainant identified another student (Student 7) who had experienced racial harassment at the School and whose parents wanted to speak with OCR. At all times relevant, Student 7 was an individual with a disability and was receiving special education services from the District pursuant to an IEP. The parents of Student 7 told OCR that Student 7 was a member of the [redacted content] team during the [redacted content] school year [redacted content]. At the beginning of the season, in [redacted content], as Student 7 was going into practice, a student yelled the N-word. Student 7's parents told OCR that they called the former Principal and were told that, because the incident occurred after school hours, there was nothing that could be done. According to Student 7's parents, the [redacted content] coach nonetheless addressed the incident directly with the team, prohibiting name-calling and demanding that the team include Student 7 and not give [redacted content] a hard time.

Student 7's parents told OCR that, generally, Student 7 experienced multiple instances of racial harassment during the school year, including the repeated use of racial epithets directed to [redacted content], most often by Student 3. In response, the District would discipline the offending students and call their parents, but no other school-wide interventions were administered. According to Student 7's parents, other individual remedies were offered to Student 7, such as one-on-one [redacted content] with an emotional support teacher. Student 7's

parents reported that, due to the racial harassment, Student 7 experienced anxiety, school absences and anger issues, and [redacted content] left the School at the end of the [redacted content] school year and enrolled in a different school for the [redacted content] school year, with the hope that [redacted content] will be able to return to the School at some point.

The District did not produce documentation showing that it investigated any incidents involving Student 7 with the exception of one incident on [redacted content], described in more detail below.

[redacted content]

The Complainant provided OCR with a narrative statement from Student 2 regarding an incident that occurred on [redacted content], when a male student (Student 6) asked Student 2 in [redacted content] class if she called white people crackers, and when Student 2 replied no, he asked, “and what are you?” When Student 2 replied that she was Black, he stated, “You’re a n****r, n****r, n****r. I wish it was back in the old days where you were a slave.” According to the statement, Student 6 went down on his knees and said to Student 2, “You wouldn’t be standing there you would be kneeling and calling me master.”

Student 2’s father reported the incident to the Superintendent by email on [redacted content], and included a copy of Student 2’s narrative statement. Student 2’s father acknowledged in his email that he learned that Student 6 had been suspended and that District staff had called Student 6’s home. He said, however, that:

School is continuing to ignore an environment that is hostile to our daughter. This is unfortunately merely the latest in a long line of instances where the school authorities turn a blind eye to these incidents or racial remarks directed at my daughters on the hopes that they will just cease to continue. Not only do they continue, they are getting worse.

The Superintendent was on leave that day, so when Student 2’s father received an out-of-office message, he forwarded the email to the Director of Curriculum, Instruction, Assessment and Federal Programs (the Director) that same day. The Director responded to Student 2’s father, stating that she had spoken to the former Principal, who assured the Director that he had enacted appropriate disciplinary measures and ensured the separation of Student 2 from Student 6 in all classes, and would follow-up regarding additional supportive measures. The Director also attached the District’s bullying reporting form for Student 2’s father to submit a formal complaint.

The District provided OCR with witness statements that it obtained from Student 2, Student 6, and other student witnesses. The disciplinary report for Student 6 shows that he received [redacted content] for “Racial/Ethnic Intimidation,” and “Inappropriate Language Between Students,” starting on [redacted content].

Though the parents of Student 2 told OCR that the former Principal reached out to them, they do not recall that any additional specific supportive measures were offered.

[redacted content]

On [redacted content], a teacher emailed the former Principal and former Assistant Principal that Student 8 told her that Students 4 and 5 repeatedly called her inappropriate names based on race, using the N-word. There is no documentation of the District's response to this incident other than the former Principal's reply that he was "dealing with this now."

[redacted content]

On [redacted content], Student 2's father sent an email to the former Principal, former Assistant Principal, the School Counselor, and the Director of Student Services, stating, "[f]or the second time this month [Student 2] was called n****r twice in the hallway yesterday by an [redacted content] grader named [Student 3]. What is going on in that school? I look forward to a call from someone with more information." The former Assistant Principal responded, stating that he spoke with Student 2 and investigated her claim. He also stated that, since Student 3 was on the same bus as Student 2, the former Assistant Principal arranged for him [redacted content]. Additionally, the former Assistant President stated that Student 3 had been assigned a [redacted content], and when he returned to school, the School Counselor would work with him to "help avoid discriminatory actions in the future," which may involve writing an apology. The former Assistant Principal also offered for Student 2 to speak with counselors to discuss the incident. The School Counselor told OCR that she was meeting regularly with Student 2 at this point, and that she also met with Student 3 to counsel him on the inappropriate nature of his comments, at the request of administration. According to the Complainant, Student 2 never received an apology from Student 3.

The District provided OCR with the disciplinary report for Student 3 which shows that he was assigned [redacted content] for "Disrespectful Behavior" and "Racial/Ethnic Intimidation." As described above for the [redacted content] incident, the disciplinary report reflects that the Principal conducted witness interviews with Student 2, Student 3 and various student witnesses. Though the disciplinary report refers to the [redacted content] incident, it is not clear from the documentation whether the [redacted content] was in response to the [redacted content] incident, in response to the [redacted content] incident, or both.

[redacted content]

On [redacted content], a teacher emailed the former Principal and former Assistant Principal to report that there was a new racial slur written on the inside of the door in the boy's bathroom. There is no documentation of the District's response to this incident other than the former Principal's reply that he would try to check the video to find the culprit.

[redacted content]

The Complainant provided OCR with a photograph of Student 3 at School on [redacted content], during [redacted content], with a Confederate flag draped around his shoulders. According to the Complainant, a teacher told Student 3 to put the flag away, but he disregarded her. The Complainant emailed School staff about the incident that same day, and in response the former Assistant Principal stated:

I would agree that the limits of my authority are not very effective when dealing with racism. We are presently working on the case with the student in the picture and will include upper administration in the implementation of [Policy 103].

The disciplinary report for Student 3 reflects that he was assigned a [redacted content] for “Obscenity/Profanity/Offensive Language.” The disciplinary report notes that the former Assistant Principal spoke to Student 3 “about freedom of speech and disrupting and infighting.”

[redacted content]

Student 15 was assigned [redacted content] on [redacted content], for “Obscenity/Profanity/Offensive Language” for reading out loud racially inappropriate lyrics. The School Counselor told OCR that she was asked to speak with Student 15 about his conduct. No other documentation was provided from the District regarding this incident other than the disciplinary report.

[redacted content]

On [redacted content], Student 7’s father wrote in an email to the former Principal, the Director of Student Services, and the Superintendent that Student 9 called Student 7 the N-word in the [redacted content] hallway [redacted content] that day. The documentation provided by the District shows that Student 9 was assigned [redacted content] for “Obscenity/Profanity/Offensive Language.” The disciplinary report notes that Student 9 “said the ‘n’ word to a student in the school.” Additionally, according to the School Counselor, around this same time, the former Principal arranged for the School Counselors to check in more regularly with Student 7. The School Counselor told OCR during her interview that she recalled an incident occurring with Student 7 outside of School, and that she provided support generally to Student 7. The District provided OCR with documentation showing that Student 7’s father reported to School staff that several students used the N-word toward Student 7 [redacted content].

In another email exchange in [redacted content], Student 7’s parents provided screenshots of a text exchange to the former Principal and other administrators, in which a classmate (Student 8) directed racial epithets to Student 7 and made sexually offensive statements to [redacted content]. The District did not provide any documentation to OCR showing any response to this report.

[redacted content] Though the School had conducted team meetings [redacted content], those team meetings did not explicitly discuss the topic of the FAPE impact of the harassment of Student 7.

[redacted content]

Student 3 was disciplined with [redacted content] on [redacted content], for “Obscenity/Profanity/Offensive Language” for calling another student the N-word. No other documentation was provided by the District regarding this incident other than the disciplinary report.

[redacted content]

During OCR's investigation, another incident occurred with Student 2 in [redacted content] that the Complainant reported to OCR in [redacted content]. The Complainant told OCR that, in response to this incident, for the first time Student 2's parents were offered the opportunity to file a complaint, which they did on [redacted content]. The Complainant told OCR that she believed that this change in practice was likely due to their filing an OCR complaint. OCR notes, however, that the documentation shows that the Director emailed the bullying reporting form to Student 2's father on [redacted content], and advised him that he could submit a formal complaint, as detailed above for that incident.

Student 2's father completed the complaint form and noted in it that Student 3 had engaged in racial harassment against Student 2 since [redacted content], as did other classmates, and summarized the incidents already reported to date. The complaint form also noted that, recently, the N-word was intentionally used within earshot of Student 2 and another student and provided as follows:

These individual incidences, as well as the larger culture of racial hostility and discrimination at South Middleton [redacted content] School, have negatively impacted [Student 2's] education and her feelings of safety and stability while at school.

The Complainant provided OCR with the District's written "Summary of Investigation," which shows that the District interviewed Student 2 and Student 3. According to the summary, during the interview with Student 3, he admitted to using the N-word with his friends [redacted content], but maintained that he was only saying it to his friends. Student 3 also said that while he tries not to use the word at school, "it slipped out a couple of times." The Summary states that the report was found to be substantiated and in violation of Policy 103 and that "the District recognizes that this was not the first occurrence [Student 3] was found to use such offensive and discriminatory language while [Student 2] was in close proximity, as a similar event occurred on [redacted content]."

The Summary details supportive measures offered to Student 2, including that Student 2 was permitted to be dismissed from her last period two to three minutes early to prevent her from being in proximity to Student 3 during dismissal as she walked to her bus. Student 2 was also asked to identify friends who could accompany her. In addition, Student 2 was offered a Student Assistance Program referral and access to counseling, though Student 2 explained that this was unnecessary since she had been receiving community-based [redacted content] counseling. Student 2 was also given the opportunity to speak with the School Counselor, which Student 2 declined. Last, the District reviewed common classes between Student 2 and Student 3 and confirmed that they did not share any current courses. The District stated in the Summary, however, that it would ensure that Student 2 and Student 3 would not be in the same class in the future as well.

The Summary stated that the District would take corrective action by pursuing disciplinary consequences, against Student 3 including [redacted content]. The Summary also states that the District would tailor educational interventions and counseling to address Student's 3's racial discrimination.

During an interview with OCR, the School Counselor said that she met regularly with Student 2, with frequent check-ins, sometimes more than once a week. The School Counselor also reported that she followed up with Student 3 per a request from administration to discuss hate speech and discrimination.

Safety Plan

In [redacted content], the Complainant reached out to officials at the District to ask to enter into “negotiated individual relief for Student 2 in the form of a Safety Plan.” The District accepted the request and implemented the requested Safety Plan. The Plan requires that the District maintain separation between Student 2 and several students at the School, including Student 3 and Student 6. The Plan also identifies School staff with whom Student 2 will have regular check-ins and to whom she may report further incidents of racial harassment. The Plan was incorporated into Student 2’s IEP. The Complainant told OCR that, as of [redacted content], the Safety Plan was working well. The IEP meetings that led to these revisions did not, however, specifically discuss the FAPE impact of the harassment on Student 2.

School-wide Interventions

The District provided documentation showing that School staff were provided with Justice, Equity, Diversity, Inclusion (JEDI) training in [redacted content]. The School Counselor explained that during the [redacted content] school year, the School started a task force for JEDI, however, due to controversy regarding the training curriculum in the community, it was placed on pause. During the [redacted content] school year, the School partnered with the YWCA to conduct bystander training, and the School Counselor asked every classroom to post the District’s bullying policy. The School Counselor also told OCR that, starting in [redacted content], staff conducted lessons for all grade levels on bullying, treating people kindly, what bullying looks like, and what do to if you see bullying. She acknowledged, however, that there has been no specific or direct training for staff on how to respond to reports of racial harassment. The District also provided documentation showing that the Pennsylvania Department of Education, Office for Safe Schools, conducted staff training in [redacted content] regarding “Building a Trauma Informed System.”

LEGAL STANDARDS

Racial Harassment

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to take prompt and effective steps reasonably calculated to (i) end the

harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome race-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing acts need not be targeted at the complainant in order to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant's or victim's race, color, or national origin so long as it is motivated by race, color, or national origin (i.e., it might be based on the race, color, or national origin of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation.

Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based, color-based, or national origin-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race, color, or national origin as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race, color, or national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient maintain and provide to OCR records and other information that may be pertinent for OCR to determine if a recipient is in compliance with the nondiscrimination requirements of Title VI.

Disability Discrimination

The Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of

§§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

Section 104.35(a) of the regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services. Under § 104.35(b), tests and other evaluation materials must be administered by trained personnel, reliable, and valid for the purpose for which they are being used.

Section 104.36 of the regulations requires that school districts have a system of procedural safeguards with respect to any action taken by the district regarding the identification, evaluation or placement of the student. Such safeguards must include notice of the action, an opportunity to examine relevant records, an impartial hearing with opportunity for participation by parents or guardians and representation by counsel, and a review procedure.

The Section 504 implementing regulation, at 34 C.F.R. § 104.61, incorporates by reference the Title VI record-keeping requirements identified in the regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c).

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Sexual Harassment

Title IX and its implementing regulation at 34 C.F.R. § 106.31(a) prohibit recipients of federal financial assistance from subjecting students to discrimination based on sex under any of the recipient's education programs or activities. Sexual harassment is a form of discrimination based on sex under Title IX.

The regulation at 34 C.F.R. § 106.30 defines "sexual harassment," in relevant part, as "conduct on the basis of sex" that includes "(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This definition of sexual harassment may include harassment based on sex or sex stereotyping if a reasonable person would determine that the harassment is so severe, pervasive, and objectively offensive that it denies a person equal educational access. See 85 Fed. Reg. 30179.

The Title IX regulation at 34 C.F.R. § 106.44(a) requires a recipient to respond promptly to actual knowledge of sexual harassment in the recipient's education program or activity against a person in the United States in a manner that is not deliberately indifferent. In the elementary and secondary school context, the regulations define "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of an elementary or secondary school. *Id.* § 106.30(a).

The regulations state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. *Id.* § 106.44(a).

When the Title IX coordinator or an employee of an elementary or secondary school has actual knowledge of sexual harassment in a recipient's education program or activity, the Title IX coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. 34 C.F.R. § 106.44(a).

The regulation implementing Title IX, at 34 C.F.R. § 106.45(b)(10)(i)&(ii), requires a recipient to maintain for a period of seven years records of each sexual harassment investigation, including any determination regarding responsibility, and for each response required under 34 C.F.R. § 106.44, a recipient must create and maintain records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

ANALYSIS

OCR finds the District had notice of a racially hostile environment for Student 2 starting in [redacted content], which the District acknowledges. OCR also finds that the District failed to take steps that were prompt and that were reasonably calculated to prevent further harassment or remedy its effects, and as such, the hostile environment continued – with at least one repeated offender – through the entire [redacted content] school year, impacting multiple students.

OCR's investigation reflected that the District took no corrective action for the first incident about which it received notice in [redacted content], and waited two months to take corrective action regarding the second [redacted content] incident, when Student 3 was given a [redacted content] in [redacted content]. OCR also finds that when the District received notice of later incidents in [redacted content], the District repeatedly substantiated the incidents – including repeated racial epithets, referring to a Black student as a slave, and one student whom the District had disciplined multiple times for racially discriminatory behavior later showed up at school draped in a Confederate flag [redacted content] – and took some disciplinary action against offenders but failed to take steps to redress any hostile environment for specific students other than to make counseling available to the students as needed. Notably, it took approximately 10 months for the District to develop a Safety Plan for Student 2, following [redacted content].

OCR also identified compliance concerns regarding District recordkeeping. The District did not start following its policy to document its investigations and draft an investigative report detailing District findings until 8 months after it first received notice that a racially hostile environment had begun. Similarly, the District provided OCR with documentation of other incidents of racial harassment reported to the School for the [redacted content] school year, but the District provided OCR with very limited documentation of its investigation and resolution of each incident. In addition, there is no documentation that the District followed its policy by notifying the Special Education Director of the alleged harassment directed towards Students 2 and 7, or by completing an investigative report.

The evidence shows that Student 2 had an IEP in place during the [redacted content] school year, as did Student 7. The parents of Student 7 notified the School that they were [redacted content] due to the impact of the racial harassment on [redacted content] disability. Similarly, Student 2's father repeatedly notified School staff that Student 2 was experiencing a worsening hostile environment that was impacting her ability to access the School's educational program. The evidence produced to date shows that the District had sufficient information in the [redacted content] to trigger its obligation to convene a multidisciplinary team meeting for Student 2 and Student 7 to address the FAPE impact of the hostile environment. Documentation that the District provided shows that for Student 2, a safety plan was put into place and incorporated into Student 2's IEP to address the bullying that Student 2 experienced. Yet, while the District held team meetings for both Student 2 and Student 7, the documentation from the District does not show that these team meetings included any discussion directed specifically at the FAPE impact of the bullying that the students experienced.

Finally, because the District provided no records related to its response to text notice it received from a parent in [redacted content] regarding reported sexually offensive conduct, OCR is concerned that the District appears to have failed to fulfill its recordkeeping obligations under Title IX as well as to have failed to fulfill its obligation to inform the parent how to file a formal complaint and to have offered supportive services to the affected student.

CONCLUSION

On September 17, 2024, the District signed a Resolution Agreement with OCR to resolve the violations of Title VI and compliance concerns with Section 504, Title II and Title IX identified in our investigation. The Agreement requires the District to:

- Issue a memorandum and conduct training to School staff regarding the District's Section 504/Title II requirement to assess whether a student with a disability who experiences harassment has experienced an impact to their ability to access FAPE;
- Offer Student 2 and Student 7 services to remedy the effects on the students of the hostile environment they experienced during the [redacted content] school year;
- Send a letter to Student 7, offering for her and her parents/guardians to meet with the Title IX Coordinator to discuss how to file a formal Title IX complaint and the provision of supportive services;
- Provide all School administrators, faculty and staff with Title VI and Title IX training, and survey staff following the training to assess the effectiveness of the training;
- Provide a mandatory age-appropriate orientation session for all School students on the District's policies and procedures prohibiting racial discrimination and harassment;
- Conduct a climate survey at the School, and provide OCR with a report summarizing the results, and a description of any actions that the District will take in response to the survey results;
- Post a notice on its website and in the 2024-2025 back-to-school communications regarding how to file a complaint, and conduct a prompt investigation of any complaints filed;
- Conduct an audit of all complaints of racial harassment at the School during the [redacted content] school years; and

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the District's cooperation in the resolution of this complaint. If you have any questions, please contact OCR attorney Bradley Moore at (215) 656-8502 or bradley.moore@ed.gov.

Sincerely,

/s/

Christina M. Haviland
Team Leader

Enclosure

cc: Gareth D. Pahowka, Counsel for the District, gdp@stockandleader.com